TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 897.

THE INDIANAPOLIS & ST. LOUIS RAILROAD COMPANY,
APPELLANT,

vs.

JAMES L. VANCE, COLLECTOR OF EDGAR COUNTY,
ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 15, 1877.

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2 Pleas in the Circuit Court of the United States of America for the Southern District of Illinois, held at the city of Springfield, in said district, before the Hon. Thomas Drummond, judge of the seventh judicial circuit, presiding judge of said court, and the Hon. Samuel H. Treat, district judge of the said southern district of Illinois, associate judge of said court, on Tuesday, the 10th day of July, at the June term of said court, in the year of our Lord eighteen hundred and seventy seven, and of our independence the one hundred and second year. J. A. JONES, *Clerk.*

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY }
vs.
JAMES L. VANCE, COLLECTOR OF EDGAR COUNTY; WILLIAM B. GALBREATH, Collector of Coles County; JOHN H DUNSCOMB, Collector of Moultrie County; WILLIAM C. MILLER, Collector of Shelby County; AMOS A. RHODES, Collector of Christian County; MARION E. MCWILLIAMS, Collector of Montgomery County; LUCIUS B. CORBIN, Collector of Macoupin County; HUGH L. BOYLE, Collector of Madison County, and H. G. WEBER, Collector of St. Clair County. }

SOUTHERN DISTRICT OF ILLINOIS, ss.

3 The Indianapolis and St. Louis Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Indiana, puts in its place B. W. Hanna, Esq., its solicitor in a bill in chancery, against James L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; Marion C. McWilliams, collector of Montgomery county; Lucius B. Corbin, collector of Macoupin county; Hugh L. Boyle, collector of Madison county; and H. G. Weber, collector of St. Clair county, defendants, who put in their place James K. Edsall, Esq. the attorney-general of the State of Illinois, their solicitor.

SOUTHERN DISTRICT OF ILLINOIS, ss.

Be it remembered, that heretofore, to wit, on the 22d day of June, in the year of our Lord eighteen hundred and seventy-seven, came said complainant, by its said solicitor, and filed in the office of the clerk of said court its bill in said entitled cause, which said bill is in the words and figures following, to wit.

Bill.

UNITED STATES OF AMERICA.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of Illinois.

4 Your orator, the Indianapolis and St. Louis Railroad Company, respectfully shows unto your honors, that it is a corporation organized and existing under and by virtue of the laws of

the State of Indiana, and a citizen of said state, and has its general office in the city of Indianapolis in said state, and the articles of incorporation of said company are herewith filed, marked exhibit "A," and made part of this your orator's bill.

Your orator further shows that on the 11th day of September, 1867, it leased of the St. Louis, Alton and Terre Haute Railroad Company certain lines of railroad and appurtenances, situate in the State of Illinois, particularly described in the lease of that date, a copy of which is herewith filed, marked exhibit "B," and made part of this bill, which lines of railroad, so leased as aforesaid, it has held, operated, and maintained from thence hitherto.

Your orator further shows that, as required by the laws of the State of Illinois, it returned to the auditor of public accounts of said state true and correct schedules of the property it possessed in said state, on the first day of May, in the year of 1876, a copy of, which schedule is herewith filed, marked exhibit "C," and made a part of this bill.

5 Your orator further shows that under the laws of the State of Illinois, a state board of equalization convened in the city of Springfield, in said State of Illinois, in said year of 1876, and did then and there assess against your orator, as capital stock for the year of 1876, the sum of three hundred and seventy-five thousand three hundred and twenty-six dollars, ($375,326.00,) as shown by exhibit "D," filed herewith and made part of this bill.

Your orator would further show that said assessment of capital stock against it is unjust, illegal, and void, and made without authority of law.

Your orator further shows that said sum, so unlawfully assessed against your orator aforesaid, has been certified to the county clerks of the several counties through which its said line of road runs, who have extended taxes thereon against your orator, and placed warrants for the collection of the same in the hands of the several collectors of said counties, who threaten to levy the same upon the property of your orator, and to make sale thereof, which said counties and collectors are as follows, "to wit:"

Edgar	county,	James L. Vance, collector.
Coles	"	William B. Galbreath, "
Moultrie	"	John H. Dunscomb, "
Shelby	"	William C. Miller, "
Christian	"	Amos A. Rhodes, "
6 Montgomery	"	Marion C. McWilliams, "
Macoupin	"	Lucius B. Corbin, "
Madison	"	Hugh L. Boyle, "
St. Clair	"	H. G. Weber, "

The amount of taxes assessed against said capital stock in said several counties against your orator is $14,373.53, and is distributed between said counties in said year of 1876. Your orator further shows that it will be irreparably injured if said taxes are collected

by sale of its property, and that a demand by the same is a perpetual cloud upon its prosperity, and your orator fears that unless restrained said collectors will levy on its property and sell the same for said taxes so illegally assessed.

And your orator further shows that two years after the execution of the lease herein referred to and filed as an exhibit with this bill, and two years after said complainant had taken possession of and operated by virtue of said lease, the said St. Louis, Alton and Terre Haute railroad, the general assembly of the State of Illinois passed an act in words and figures following, "to wit:" An act relating to the Indianapolis and St. Louis Railroad Company and to authorize the extension of said railroad.

Section 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the lease of the St.
7 Louis, Alton and Terre Haute Railroad Company, and the property thereof, to the Indianapolis and St. Louis Railroad Company, under which the railroad extending from Terre Haute, in the State of Indiana, to East St. Louis, in the State of Illinois, is now operated, be and stand confirmed, according to the terms of said lease; provided, however, that nothing in this act shall be construed to release the said lessor from any debt, cause of action, or contract now existing against them.

Section 2nd. The said lessees, their associates, successors, and assigns shall be a railroad corporation in this state, under the said style of the Indianapolis and St. Louis Railroad Company, and shall possess the same, or as large powers as are possessed by said lessor corporation, and such other powers as are usual to railroad corporations. Said Indianapolis and St. Louis Railroad Company may and are hereby authorized to extend said line of road from any point on the same between the cities of Pana and Litchfield, on said road, or from either of said points westward to the Mississippi river opposite Louisiana, or any point below not exceeding fifteen miles in the State of Missouri, with a branch thereof to the city of Quincy, in the State of Illinois, and the same to connect with the railroad bridge over said river, at said city of Quincy.

8 Section 3. This act to take effect and be in force from and after its passage. Approved March 10th, 1869.

And that neither before or after the passage of said act did the stockholders or officers of the complainant nor any other persons connected with the Indianapolis and St. Louis Railroad Company organize, subscribe for stock, elect officers, or do any other act to incorporate under said Illinois statute, and that no capital stock of the corporation referred to in said act was ever subscribed by the lessees referred to in aforesaid lease and act; neither did said corporation at any time issue any share or shares of capital stock, but have continued to operate said Indianapolis and St. Louis railroad the same since the passage of said act as before, and that all the capital stock owned by the complainant is the capital stock subscribed to and issued by the Indianapolis and St. Louis Railroad

Company, a corporation existing under the laws of Indiana and having its principal office in said state. So, inasmuch as your orator is without adequate remedy at law, it prays that said collectors hereinbefore named may be made defendants to this bill; that subpœna in chancery issue requiring them to appear and answer the same accordingly to law, their answer under oath being
9 hereby expressly waived, that until the further order of the court in the premises a restraining order may issue restraining them from levying upon the property or taking any steps to collect said taxes of your orator under or by virtue of any warrant or warrants which may be in their hands for collection thereof, and upon a final hearing that said injunction may be made perpetual, and for such further relief as may be equitable in the premises.

THE INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY,
By B. W. HANNA,
Solicitor.

STATE OF ILLINOIS, } ss.
SANGAMON COUNTY, }

B. W. Hanna, being duly sworn, deposes and says that he is the agent and attorney of the above-named Indianapolis and St. Louis Railroad Company; that he has read the above bill, and that the facts therein stated are true in substance and in fact, and that he is authorized by said complainant to cause said bill to be filed, and further saith not. B. W. HANNA.

Subscribed and sworn before me, this 22nd day of July, 1877.
J. A. JONES, *Clerk.*

(Endorsed:) Filed June 22nd, 1877. J. A. Jones, clerk.

10 [Copy.] *Exhibit "A" to Bill.*

Articles of the association of the Indianapolis and St. Louis Railroad Co., agreed to this twenty-eighth day of August, 1867.

We, the subscribers, for the purpose of forming a corporation to construct, own, and maintain a railroad under the general laws of Indiana, from Indianapolis, in the State of Indiana, to a point on the line dividing Indiana and Illinois at or near where the St. Louis, Alton and Terre Haute railroad intersects the same, do hereby make and enter into the following articles of association:

First. The name of said incorporation is the Indianapolis and St. Louis Railroad Company.

Second. The amount of the capital stock of the company is one million dollars.

Third. The number of shares of which said stock shall consist is twenty thousand of fifty dollars each.

Fourth. The number of directors is six.

Fifth. The names of said directors are Geo. W. Cass, Pliny Hoagland, Stillman Witt, L. M. Hubby, Thomas A. Morris, and Henry C. Lord.

Sixth. The name of the place from which the proposed road is to be constructed is Indianapolis.

Seventh. The place to which the proposed road is to be
11 constructed is on the line dividing Indiana and Illinois at or near the intersection of the same with the St. Louis, Alton and Terre Haute railroad.

Eighth. Said road is intended to pass into or through the counties of Marion, Hendricks, Putman, Clay, and Vigo.

Ninth. The length of said road, as near as may be, is twenty-five miles.

For the purposes above set forth, we hereby take the number of shares set opposite our names.

	No. Shares.
Stillman Witt, Cleveland, Ohio	200
Henry C. Lord, Cincinnati, Ohio	200
Leander M. Hubby, Cleveland, Ohio	200
William Dwight, Boston, Mass., by H. C. Lord, attorney	200
Thomas A. Morris, Indianapolis, Indiana	200
George W. Cass, Pittsburg, Pennsylvania	200
Pliny Hoagland, Fort Wayne, Indiana, by G. W. Cass, attorney	200
A Stone, Jr., Cleveland, Ohio	200
P. A. Dwight, Boston, Mass., by H. C. Lord, attorney	40
Thomas D. Messler, Pittsburg, Penn., by G. W. Cass, attorney	20
Russell Sage, New York	20
Edward King, Indianapolis, Ind	20
W. H. Harris, Indianapolis, Ind	20
Charles Butler, New York	20
Robert Bayard, New York, by Charles Butler	20
W. W. Smith, Cincinnati, Ohio	40
Samuel J. Tilden, New York	20

Certificate.

STATE OF INDIANA, } ss.
OFFICE OF SECRETARY OF STATE. }

12 I, John E. Neff, Secretary of State of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the articles of association of the Indianapolis and St. Louis Railroad Company, which articles were filed in this office on the 31 day of August, 1867, as appears from date of filing thereon endorsed, and now remaining in this office.

In witness whereof I hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 26th day of June, A. D. 1877.

[SEAL.]

JOHN E. NEFF.
Secretary of State.

[Here follows Exhibit "B" to bill, omitted from print by stipulation.]

13 *Exhibit "C" to Bill.*

Auditor's Form No. 12.

Annual return of the Indianapolis & St. Louis Railroad Company to the auditor of public accounts, as required by the 48th section of state revenue law.

Schedule No. 1.

Showing the property denominated "railroad track" belonging to or controlled by the Indianapolis & St. Louis Railroad Company on the first day of May, 1876, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

Counties.	Right of way and improvements thereon.			Track.						Total values returned listed to county.
				Main.		Side, second, or turnout.				
	No.	Acres.	Value, excluding improvement.	Value of buildings on right of way. (See Schedule No. 5.)	Miles.	Feet.	Value.	Miles.	Feet.	Value.	
Edgar,	320.00	88.500 00	1,200 00	25	132,000	$50,000 00	2.00	11,866	$3,559 00	$58,259 00
Coles,	350.00	3.500 00	27,100 00	24	117,840	56,000 00	6.06	34,972	10,491 00	97,391 00
Moultrie,	18.50	4.5 00	None.	1	21,120	8,000 00	.25	1,331	501 45	8,989 45
Shelby,	320.00	3,200 00	800 00	27	142,560	54,000 00	1.00	10,551	4,000 00	62,100 00
Christian,	121.50	1,215 00	None.	11	58,080	33,000 00	1.50	4,389	3,000 00	37,215 00
Montgomery,	410.00	4,000 00	1,250 00	31	179,500	68,000 00	4.50	22,491	3,000 00	76,250 00
Macoupin.	250.00	2,500 00	450 00	20	105,600	40,000 00	1.25	8,452	3,000 00	45,950 00
Madison.	185.00	2,300 00	2,300 00	31½	166,320	60,000 00	4.40	21,629	8,000 00	72,150 00
St. Clair.	30.00	400 00	1,000 00	22	13,200	6,000 00	5.50	29,132	10,000 00	17,400 00
Totals in state,	2,055.00	21,200 00	34,400 00	183	966,240	375,000 00	28.36	149,513	45,551 45	465,701 45

14 *Schedule No. 2.*

Showing the property denominated "rolling-stock" belonging to or controlled or operated by the Indianapolis & St. Louis Railroad Company on the first day of May, 1876, as required of railroad companies, according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

Description for length of main track on which said rolling-stock is used in each county. See schedule No. 1.	No.	Average value.	Total listed value.
Locomotives—all classes	49	3000 00	147,000 00
Passenger cars—all classes	34	1000 00	34,000 00
Sleeping, dining, and drawing-room cars. Express / Baggage cars.. \	17	450 00	7,650 00
Horse cars	652	200 00	130,400 00
Cattle cars	201	200 00	40,200 00
Coal cars	310	150 00	46,500 00
Platform cars	163	150 00	24,450 00
Wrecking cars			
Pay cars			
Hand cars	48	15 00	720 00
All other kind of cars	36	200 00	7,200 00
Total listed value of rolling-stock			$438,120.00

Length of main track on which said rolling-stock is used in Illinois	183	miles	966,240 feet.
Length of main track on which said rolling-stock is used elsewhere	83	"	438,240 "
Total length of road	266	"	1,404,480 "

15 *Schedule No. 3.*

Showing the number of ties in track per mile; the weight of iron or steel per yard, used in main and side tracks; what joints or chairs are used in track; the kind of ballasting of road; quality of buildings or structures on railroad track; the length of time iron (or steel) in track has been used, and the length of time the road has been built; all belonging to or controlled by the Indianapolis & St. Louis Railroad Company on the 1st day of May, 1876, and hereby scheduled and returned as required of railroad companies by section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

State number of ties in track per mile.	About 2,500.
State weight of iron and steel per yard in main track and side, second or turnout.	Iron weight per yard 60 main. Steel " " " Iron " " side, second or turnout. Steel " " " " "
State kind of "joints" or "chairs" used in track.	Fish joints.
State kind of ballasting used in road.	Chiefly dirt ballast.
State number of buildings or other structures on railroad tracks.	
State quality of buildings or other structures on railroad track.	
State length of time iron or steel track has been used.	
State length of time road has been built.	
State proportion of iron & steel used in "main" and "side," "second or turnouts."	

16 *Schedule No. 4.*

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided; the amount of capital stock paid up; the market value or actual value of the shares of said stock; the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all the tangible property in this state, belonging to or controlled by the Indianapolis & St. Louis Railroad Company on the 1st day of May, 1876, as required of railroad companies according to section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

1st. The amount of capital stock authorized and the number of shares into which such capital is divided; with the amount of each share.

The Indianapolis & St. Louis railroad has no capital stock whatever in the State of Illinois.

Proportion of capital stock belonging in Illinois and elsewhere.

2nd. The amount of capital stock paid up.

3rd. The market value, or if no market value, then the actual value of the shares of stock.

4th. Total amount of all indebtedness except for current expenses for operating the road.

The Indianapolis & St. Louis Railroad Company has no knowledge of the amount of the indebtedness of the St. Louis, Alton & Terre Haute Railroad Company. For information refer to said road.

5th. The total listed valuation of all the tangible property in this state.

17 *Schedule No. 5.*

Number, description, and value of station-houses, depots, machine-shops, water-tanks, and other buildings belonging to the Indianapolis and St. Louis Railroad Company, and situated upon the "right of way" of said road in Illinois:

Name of Station.	County.	Description of buildings on right of way.	Value.
Ashmore.	Coles.	Station-house.	200
Charleston.	"	" "	200
Mattoon.	"	Machine-shops and other buildings.	27,000
Stockton.	"	None.	
Alton June.	Madison.	Station-house.	250
Alton.	"	½ " "	2,000
Edwardsville Crossing.	"	½ " "	50
Venice.	"	None.	
No Komis.	Montgomery.	Station-house.	150
Irving.	"	" "	150
Hillsboro.	"	" "	300
Butler.	"	" "	150
Litchfield.	"	" " and other buildings.	500
Dorchester.	Macoupin.	" "	100
Gillespie.	"	" "	100
Bunker Hill.	"	" "	250
Vermillion.	Edgar.	None.	
Kentucky.	"	"	
Paris.	"	Station-house.	800
Walnut Grove.	"	None.	
Kansas.	"	Station-house (old frame).	200
Dudley.	"	" "	200
E. St. Louis.	St. Clair.	" " and buildings.	1,000
Windsor.	Shelby.	" " old frame.	200
Middleworth.	"	None.	
Shelbyville.	"	Station-house.	400
Moulton.	"	None.	
Tower Hill.	"	Station-house.	200
		Total value in county.	$34,400

18 STATE OF ILLINOIS, } ss.
COUNTY OF MARION, }

H. B. Hurlbut, president, and E. King, secretary of the Indianapolis and St. Louis Railroad Company, being duly sworn, depose and say, each for himself, that they are the above-entitled officers of the said rail-company, and that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property (real and personal) of the said railroad company, which are required to be returned to the auditor of public accounts, under provisions of section 48 of "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872.

H. B. HURLBUT, *Prest.*
E. KING, *Sec'y.*

Subscribed and sworn to before me, this fifth day of August, 1876.

SAMUEL E. FRAZEE.
[NOTARIAL SEAL.] *Notary Public.*

[Here follows Exhibit "D" to bill, omitted from print by stipulation.]

19 And afterwards, to wit, on Friday, the 22nd day June, in the year aforesaid, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:

Restraining Order.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY }
vs.
JAMES L. VANCE, COLLECTOR OF EDGAR COUNTY; WILLIAM B. GALBREATH, COLLECTOR OF COLES COUNTY; JOHN H. DUNSCOMB, COLLECTOR OF MOULTRIE COUNTY; WILLIAM C. MILLER, COLLECTOR OF SHELBY COUNTY; AMOS A. RHODES, COLLECTOR OF CHRISTIAN COUNTY; MARION C. MCWILLIAMS, COLLECTOR OF MONTGOMERY COUNTY; LUCIUS B. CORBIN, COLLECTOR OF MACOUPIN COUNTY; HUGH L. BOYLE, COLLECTOR OF MADISON COUNTY, AND H. G. WEBER, COLLECTOR OF ST. CLAIR COUNTY. } In Chancery.

The application for an injunction in this cause is set for hearing on the 10 day of July, 1877, and the above-named defendants, and each of them, are hereby enjoined and restrained from levying upon or distraining the property of the Indianapolis and St. Louis Railroad Company, or from taking any steps to collect the taxes levied for the year 1876 upon the capital stock of the Indianapolis and St. Louis Railroad Company, under or by virtue of any warrant, or warrants, which may be in their hands for collection thereof

20 until said application is heard and determined. And afterwards, to wit, on the 22nd day of June, in the year aforesaid,

there was issued out of the office of the clerk of said court a certified copy of the restraining order in said cause, which said certified copy of said restraining order, together with the return of the marshal thereon, is in the words and figures following, to wit:

Certified Copy of Restraining Order served on Defendants.

In the Circuit Court of the United States for the Southern District of Illinois.

FRIDAY, June 22nd, A. D. 1877.

Present, Hon. Samuel H. Treat, district judge.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY
vs.
JAMES L. VANCE, COLLECTOR OF EDGAR COUNTY; WILLIAM B. Galbreath, Collector of Coles County; John H. Dunscomb, Collector of Moultrie County; William C. Miller, Collector of Shelby County; Amos A. Rhodes, Collector of Christian County; Marion C. McWilliams, Collector of Montgomery County; Lucius B. Corbin, Collector of Macoupin County; Hugh L. Boyle, Collector of Madison County, and H. G. Weber, Collector of St. Clair County.

The application for an injunction in this cause is set for hearing on the 10th day of July, 1877, and the above-named defendants, collectors as aforesaid, and each of them, are
21 hereby enjoined and restrained from levying upon or distraining the property of the Indianapolis and St. Louis Railroad Company, or from taking any steps to collect the tax levied for the year 1876 upon the capital stock of the Indianapolis and St. Louis Railroad Company, under or by virtue of any warrant, or warrants, which may be in their hands for collection thereof, until said application is heard and determined.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF ILLINOIS, } *ss.*

I, J. A. Jones, clerk of the Circuit Court of the United States in and for the Southern District of Illinois, do hereby certify the foregoing is a true and correct copy of an order of court this day entered in a certain cause, wherein the Indianapolis and St. Louis Railroad Company is complainant, and James L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; Marion C. McWilliams, collector of Montgomery county, Lucius B. Corbin, collector of Macoupin county; Hugh L. Boyle, collector of Madison county, and H. G. Weber, collector of St. Clair county, Illinois, are defendants, as truly and completely as the same appears of record in my said office.

22 In witness whereof, I have hereunto set my hand and seal of said court, at Springfield, in said district, this twenty-second day of June, A. D. 1877.

[SEAL.] J. A. JONES, *Clerk.*

I hereby appoint as my especial deputies to execute this writ—
John Logan as to Lucius B. Corbin.
A. W. Owens as to James L. Vance.
William Friedlander as to H. G. Weber.
Cyrus Hall as to William C. Miller.
Leonard G. Faith as to C. M. McWilliams.
G. W. Mitchell as to Wm. B. Galbreath.
Washington Linders as to John H. Dunscomb.
June 22d, 1877. E. R. ROE, *U. S. M.*

I have served the within writ on the defendants therein named, by delivering to each of them personally a true copy of the same, as follows, to wit: upon Lucius B. Corbin, collector of Macoupin county, June 23, 1877; upon James L. Vance, collector of Edgar county, June 25, 1877; upon William B. Galbreath, collector of Coles county, June 25th, 1877; upon John H. Dunscomb, collector of Montgomery county, July 5th, 1877; William C. Miller, collector of Shelby county, June 25th, 1877; upon Amos A. Rhodes, collector of Christian county, June 23rd, 1877; upon Marion C. McWilliams, collector of Montgomery county, June 23rd, '77; upon Hugh L. Boyle, collector of Madison county, June 23rd, 1877; upon H. G. Weber, collector of St. Clair county, June 23rd, 1877.

23 E. R. ROE, *U. S. Marshal.*

(Endorsed:) Filed July 9, 1877. J. A. Jones, clerk.

And the afterwards, "to wit," on the 10th day of July, in the year aforesaid, came said defendants, by their said solicitor, and filed in said clerk's office their answer in said cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, } *ss.*
SOUTHERN DISTRICT OF ILLINOIS. }

In the Circuit Court of the June Term, A. D. 1877.

The joint and several answers of James L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; Marion C. McWilliams, collector of Montgomery county; Lucius B. Corbin, collector of Macoupin county; Hugh L. Boyle, collector of Madison county; and Herman G. Weber, col-

lector of St. Clair county, defendants, to the bill of complaint of the Indianapolis and St. Louis Railroad Company, complainant.

These defendants reserving all right of exception to the many errors, omissions, and uncertainties in the bill of complaint contained, for answer thereto, and to such parts as they are informed it is material for them to answer unto, answering say—

24 They admit that the Indianapolis, St. Louis R. R. Company was originally a corporation organized under the laws of the State of Indiana, and having its principal office at Indianapolis, in said state.

But defendants aver that by virtue of the certain act of the general assembly of the State of Illinois, entitled "An act relating to the Indianapolis and St. Louis Railroad Company, and to authorize the extension of said railroad," approved March 10th, 1869, which act is set forth in complainant's bill of complaint, which said act was passed by the general assembly of the State of Illinois at the request of, and was acted under and accepted by, complainant, and whereby the said Indianapolis and St. Louis Railroad Company became and has ever since continued to be in this state a corporation organized and existing under the laws of the State of Illinois.

Defendants admit that said Indianapolis and St. Louis Railroad Co. did, at the time and in the manner in the bill stated, lease from the St. Louis, Alton, and the Terre Haute Railroad Company certain lines of railroad and appurtenances thereto belonging, situate in the State of Illinois, described in the lease, a copy

25 of which is filed with the bill and marked exhibit "B," and which is same lease referred to and confirmed in the act of the general assembly approved March 10th, 1869, recited in the bill of complaint, and that complainant has held, operated, and maintained said leased line from thence hitherto.

Defendants admit that complainant did make and return to the auditor of public accounts the schedule or return of property filed with the bill of complaint as exhibit "C," but deny that the same was true and correct.

And afterwards admits that the state board of equalization of the State of Illinois did meet at Springfield, in said state, and aver that in pursuance of the statute in that behalf said board assessed the property of railroad corporations in this state, and the said board, in pursuance of the statute, assessed the various kinds of railroad property denominated "railroad track," "rolling stock," and capital stock, including franchises, and that in pursuance of the statute the assessed and equalized value of the capital stock, including the franchise over and above the assessed and equalized value of the tangible property of such railroad corporation in this state, was distributed to the various counties into or through which such railroads extend in the proportion that the length of main line in each

26 county bore to the length of the entire line in this state. But defendants deny that the state board made any assessment

under the designation or upon the capital stock and franchises of said complainant, except so far as the same pertained to said leased line of road in this state, as hereinafter stated. Defendants further show that by the terms of said lease referred to in the bill and marked exhibit "B," filed with the same, the said Indianapolis and St. Louis Railroad Company was at all times during the term of said *said* lease to pay all taxes, assessments, and imposts of whatever kind which should at any time during the term of said lease be charged, levied, assessed, or imposed upon the line of said road leased by it, or upon either or any part of the railroad or its appurtenances so leased by it, or that might be charged against the St. Louis, Alton and Terre Haute Railroad Company by reason of its ownership of said leased road or any part thereof.

Defendants further show to the court that the state board of equalization in pursuance of the statute assessed the value of the "capital stock" or property of the various railroad corporations in the state, and that the capital stock of the St. Louis, Alton and
27 Terre Haute R. R. Company as equalized over and above the amount of the assessed and equalized value of the tangible property for the year 1876 was $518,764, and that such assessment was according to the statute distributed according to the length of the main track in each county, and that on the portion of the line leased by the Indianapolis and St. Louis Railroad Company the proportionate part of said $518,674 was distributed, to wit: the sum of $375,326, which was likewise distributed to the counties along said leased line in proportion to the length of the main track in each, and defendants deny such assessment was made upon the capital stock, including the franchise of the Indianapolis and St. Louis R. R. Co., but was only the proper proportion of the assessment of the property of the St. Louis, Alton and Terre Haute R. R. Co., a corporation organized under the laws of the State of Illinois, which had been leased as aforesaid by the Indianapolis and St. Louis R. R. Co., as more fully appears from the printed copy of the proceedings of the board of equalization for the State of Illinois for 1876, referred to in the bill as exhibit "D," pages 70 and 72. Defendants further show that said complainants made no return of shares of capital stock or indebtedness to the auditor, as required by law, but stated as to the indebtedness the following: "The Indianapolis and St. Louis Railroad Company has no knowledge of the
28 amount of the indebtedness of the St. Louis, Alton and Terre Haute Railroad Company. For information refer to said road."

And the St. Louis, Alton and Terre Haute Railroad Co. in its sworn return to the auditor stated that $\frac{1}{100}$ of its shares of stock and bonded debt was thus: shares of stock $1,269,158; debt exclusive of debt for current expenses $1,863,117, and made the following statement: "The above statements represent but $\frac{1}{100}$ of the capital stock and bonded indebtedness of this company, for the

reason that the main line of the company's road, from east St. Louis to Terre Haute, Ind., 189 miles, and the Alton branch, 4 miles, are leased for 99 years to the Indianapolis and St. Louis R. R. Co., and under the lease the latter co. are to pay, and have assumed the payment of, all taxes assessed or apportioned to the leased portions of the line, leaving but 70 miles to be operated by or taxed to this company. The same divisions as to the state board made last year in this apportionment of stock and debts, as will more fully appear from said returns or certified copies hereof to be produced as this court shall direct.

Defendants further aver that the assessments of the capital stock of the said Indianapolis and St. Louis R. R. Co. and the distribution thereof was based upon the information contained in the returns of said companies referred to above.

29 Defendants admit that taxes have been levied in the several counties upon the proportions of the assessed value of capital stock distributed to each, and that the amount of such taxes for the year 1876 is correctly stated in the bill.

Defendants insist and submit that the matters and things in the complainant's bill averred are not sufficient to entitle it to the relief sought, and that said bill is defective for want of equity on its face, and defendants ask the same benefit of this defence as if they had demurred to the bill; and deny that there is any other thing in the bill charged, not herein well and truly answered, traversed, and avoided or denied, that is true to the knowledge and belief of defendants. All of which matters defendants are ready and willing to prove as this court shall direct, and pray to be hence dismissed with their reasonable costs, &c.

JAMES K. EDSALL,
Attorney-Gen'l. of Illinois, for Defendants.

(Endorsed:) Filed July 10th, 1877. J. A. Jones, clk.

And afterwards, to wit, on Tuesday the 10th day of July, at the June term of said court, in the year aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

30 *Decree.*

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY
vs.
JAMES L. VANCE, COLLECTOR OF EDGAR COUNTY; WILLIAM B. Galbreath, Collector of Coles County; John H. Dunscomb, Collector of Moultrie County; William C. Miller, Collector of Shelby County; Amos A. Rhodes, Collector of Christian County; M. C. McWilliams, Collector of Montgomery County; Lucius B. Corbin, Collector of Macoupin County; Hugh L. Boyle, Collector of Madison County; A. G. Weber, Collector of St. Clair County.

By agreement of parties, July 10th, 1877, upon this day this cause is submitted to the court for final hearing upon bill, answer, and exhibits filed herein, and the court being sufficiently advised in the premises, doth order and adjudge and decree that the restraining order heretofore granted in this cause be dissolved, and that the complainant's bill be dismissed and that the complainant pay the costs of this suit to be taxed; from which decree the said complainant prays an appeal to the Supreme Court of the United States.

And that such appeal be made a supersedeas and operate as
31 a stay of the collection of the taxes heretofore restrained and of all proceedings in the premises; which is granted by the court upon the condition that the complainant within thirty days from this date file an appeal bond to the defendants and their successors in office, with good and sufficient sureties to be approved by the clerk, in the penal sum of twenty-five thousand dollars, conditioned for the payment of the taxes, the collection of which was heretofore restrained in this cause, and that the complainants will pay and answer all costs if it shall fail to make good its said appeal.

It is further ordered by the court, the counsel for the respective parties consenting thereto, that the printed book containing the proceedings of the state board of equalization for the year 1876, referred to in the bill as exhibit "B," and the printed pamphlet containing the articles of incorporation and lease referred to in the bill as exhibits "A" and "B," respectively, be set up and transmitted to the Supreme Court of the United States in lieu of copies thereof, and that they may be omitted from the transcript to be made by the clerk, and that any of such documents may be referred to and used in the Supreme Court, with like effect as if the same had been copied into the transcript of the record.

'32 And afterwards, to wit, on the 25th day of July, in the year aforesaid, came said complainant, by its said solicitor, and filed in the office of the clerk of said court its appeal bond in said cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that the Indianapolis and St. Louis Railroad Co., a corporation organized and existing under the laws of the State of Indiana, and E. B. McClure and W. B. Dunlap, residents of the county of Coles and State of Illinois, sureties, are held and firmly bound unto James L. Vance, collector of Edgar county; William B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; M. C. McWilliams, collector of Mongomery county; L. B. Corbin, collector of Macoupin county; Hugh L. Boyle, collector of Madison county; and Herman G. Weber, col-

lector of St. Clair county, and their successors in office, all in the State of Illinois, in the penal sum of twenty-five thousand dollars, for the payment of which well and truly to be made we and
33 each of us bind ourselves, our successors, heirs, executors, administrators, and assigns jointly, severally, and firmly by these presents.

In witness whereof we have hereunto set our hands and seals, this 20th day of July, 1877.

The condition of the above obligation is such that, whereas at the June term, A. D. 1877, the Circuit Court of the United States for the Southern District of Illinois, in a certain cause pending in said court on a bill in chancery, exhibited by the said railroad company against the above-named obligees, to enjoin the collection of certain taxes described in said bill. The said obligees did obtain and order and decree of said court, dated July 10th, 1877, dissolving the injunction theretofore granted in said cause, and dismissing said bill at said complainant's cost, from which decree the said railroad company has prayed and appealed to the Supreme Court of the United States, and that such appeal be made a supersedeas and operate as a stay of the collection of the said taxes and of all proceedings in the premises, which was granted by the court upon the condition that the said railroad company file a bond as is provided in this decree. Now, if the said Indianapolis and St. Louis Railroad Company shall well and truly pay or cause to be paid the said taxes hereintofore enjoined in said cause, and all such
34 damages and costs as may be awarded against it, if it shall fail to make good its said appeal, then this obligation shall be void, otherwise to be and remain in full force and effect.

THE INDIANAPOLIS AND ST. LOUIS R. R. C.,
By H. B. HURLBUT, *President.* [SEAL.]

Attest: E. KING, *Sect.*

E. B. McCLURE. [SEAL.]
W. B. DUNLAP. [SEAL.]

(Endorsed:) Filed July 25, A. D. 1877. J. A. Jones.

UNITED STATES OF AMERICA, } ss.
SOUTHERN DISTRICT OF ILLINOIS. }

I, John A. Jones, Clerk of the Circuit Court of the United States in and for said Southern District of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed and proceedings had thereon in a certain cause lately pending in said court, wherein the Indianapolis and St. Louis Railroad Company is complainant and James L. Vance, collector of Edgar
35 county; William B. Galbreath, collector of Coles county; John H. Dunscomb, collector of Moultrie county; William C. Miller, collector of Shelby county; Amos A. Rhodes, collector of Christian county; Marion C. McWilliams, collector of Mont-

gomery county; Lucius B. Corbin, collector of Macoupin county; Hugh L. Boyles, collector of Madison county; and H. G. Weber, collector of St. Clair county, are defendants, as fully and completely as the same appear of file and of record in said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this 22 day of September, in the year of our Lord eighteen hundred and seventy-seven, and of our independence the one hundred and second year.

[SEAL.] J. A. JONES, *Clerk.*

36 Supreme Court of the United States. October term, 1877.

INDIANAPOLIS AND ST. LOUIS RAILROAD Company, Appellants,
vs.
JAMES L. VANCE ET AL., COUNTY COLLECTOR, Appellees. } 897.

It is hereby stipulated by the counsel for the respective parties that the printed pamphlets annexed to the record as exhibits "B" and "D," containing respectively the printed articles of association of the Indianapolis and St. Louis Railroad Company, and the contract or lease between that company and the St. Louis, Alton, and Terre Haute R. R. Co., the same being exhibit "B," and also the proceedings of the state board of equalization of Illinois for the year 1876, (exhibit "D,") may be omitted in printing the record; that the respective parties may, in their briefs, print such extracts from said exhibits as they may deem necessary to the fair presentation of the case.

Dated October 16th, 1877.

B. W. HANNA,
Counsel for Appellants.
JAMES K. EDSALL,
Attorney-General of Ill., for Appellees.

(Endorsed:)

37 Supreme Court U. S. 1877, October term.—No. 897.

THE INDIANAPOLIS AND ST. LOUIS R. R. Co.
vs.
JAMES L. VANCE, COLLECTOR, &c.

Stipulation in regard to printing record. Filed 16th October, 1877.

Supreme Court of the United

THE INDIANAPOLIS AND ST. LOUIS RAILI
COMPANY, Appellant,

vs.

JAMES L. VANCE, ET AL., Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNI
SOUTHERN DISTRICT OF ILLINOI

BRIEF FOR APPELLANT

BY R. P. RANNEY, and B. W. HANI

Filed January , 1878.

Supreme Court of the United States.

NO. 897.

THE INDIANAPOLIS & ST. LOUIS RAILROAD COMPANY, APPELLANT,

vs.

JAMES L. VANCE, ET AL., APPELLEES.

BRIEF.

This is a Bill in Equity, brought to restrain the collection of $14,373.53, for capital stock taxes assessed against the appellant, in the State of Illinois, for the year 1876.

The case made by the pleadings and exhibits, and the questions arising thereon, are substantially the same as in the case No. 896, to restrain the collection of the capital stock taxes assessed against the appellant for the three years prior to 1876. We suppose a decision of the questions arising in that case will, in effect, dispose of this case; and as we have filed a full brief in that case, we file copies in this, as equally applicable to the questions arising here, and as an expression of our views upon them.

R. P. RANNEY and
B. W. HANNA,
Solicitors for Appellant.

Supreme Court of the United

THE INDIANAPOLIS AND ST. LOUIS RAILR COMPANY, Appellant,

vs.

JAMES L. VANCE, ET AL., Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNIT

SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLANT

BY R. P. RANNEY, and B. W. HANN

Filed January , 1878.

Supreme Court of the United States.

THE INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY, Appellant.

vs.

JAMES L. VANCE, ET AL., Appellees.

STATEMENT.

The appellant is a railroad corporation, organized and existing under and by virtue of the laws of Indiana, and prior to September 11, 1867, owned and operated a railroad extending from Indianapolis to the State line of Illinois. At that date, it leased a line of railroad belonging to the St. Louis, Alton & Terre Haute Company, a corporation formed in Illinois, extending from the terminus of its own road, across the State of Illinois, together with a short branch terminating on the Mississippi, at Alton, and has since operated this leased line in connection with its own road.

About two years thereafter, some question having arisen as to the legality of this lease, the General Assembly of Illinois passed the special act of March 10, 1869, which is copied on page 24 of the printed record. By the first section of this act, it was provided, that the lease under which the line was then operated,

should "be and stand confirmed, according to the terms of said lease;" and by the second, that "the said lessees, their associates, successors and assigns should be a railroad corporation in this State, under the said style of the Indianapolis & St. Louis Railroad Company, and should possess the same, or as large powers as are possessed by said lessor corporation, and such other powers as are usual to railroad corporations." It also gave the authority to extend the line from and to the points particularly named in this section. The act took effect from its passage.

The amended bill avers, that "neither before, or after the passage of said act, did the stockholders, or officers of the complainant, nor any other persons connected with the Indianapolis and St. Louis Railroad Company, organize, subscribe for stock, elect officers, or do any other act, to incorporate under said Illinois statute, and that no capital stock, of the corporation referred to in said act, was ever subscribed by the lessees referred to in the aforesaid lease and act: neither did said corporation, at any time, issue any share, or shares of capital stock, but has continued to operate said Indianapolis & St. Louis Railroad, the same since the passage of said act, as before, and that all the capital stock owned by the complainant, is the capital stock subscribed to, and issued by, the Indianapolis & St. Louis Railroad Company, a corporation existing under the laws of Indiana, and having its principal office in said State."

The bill further states, that the appellant, as required by the laws of the State of Illinois, returned to the Auditor of Public Accounts, true and correct schedules of all the property it possessed in said State, on the first day of May, in each of the years, 1873, —4 and 5, copies of which are filed with the bill, made part thereof, and marked Exhibits "C," "D," and "E," and are found on pages 5 to 20 of the printed record, which embrace all the tangible property possessed, or used by the appellant in the State of Illinois. That the Board of Equalization,

convened in that State for those years, to whom these returns were submitted, assessed against the appellant, on its capital stock, for the year 1873, $2,919,184—for 1874, $1,125,139—and for 1875, $1,004,416; that these sums were certified to the County Clerks of the several counties, through which said leased line runs, who have extended taxes thereon against the appellant, and placed warrants, for the collection of the same, in the hands of the collectors of said counties, who threaten to levy the same upon the property of the appellant, and to make sale thereof.

The amount of taxes thus assessed, amounts in the aggregate to $76,464.35, and is distributed between said counties, in the proportions shown by exhibit "1," filed with the bill, and found on pages 20 and 21 of the printed record. These collectors, thus holding warrants, are made respondents to the bill. It is averred that these assessments of the capital stock of the appellant, are unjust, illegal and void, and made without authority of law; that it will be irreparably injured if said taxes are collected by sale of its property, and that a demand of the same is a perpetual cloud thereon; that the complainant fears, that unless restrained, said collectors will levy on its property, and sell the same for said taxes, so illegally assessed.

On the 20th day of July, 1876, a preliminary injunction was allowed by the Circuit Court, and on the 5th day of September following, the respondents filed their answer.

The answer expressly admits nearly all the material averments of the bill, and expressly denies but a single one. It, however, recites again the special act, copied at length in the amendment to the bill, and the respondents aver, that "as they are informed and believe," the complainant "accepted and acted under said act of April 10, 1869, and thereby became and have ever since continued to be in this State a corporation organized and existing under the laws of the State of Illinois."

They further show that by the terms of the lease, appended to

the bill as exhibit "B," and found on page 14, Art. X, of the lease, the complainant agreed to pay all taxes, assessments and imposts which might be levied upon the leased line, or that might be charged against the lessor, "by reason of its ownership of said leased road, or any part thereof." And that the assessments made, and taxes levied, were not upon the capital stock and franchise included, of the complainant, but upon so much of the stock and franchise of the lessor company (being an Illinois corporation) as represented the portion of its road leased to the complainant, and which was charged against the complainant, because of its contract obligation to the lessor company, to pay all taxes, &c., as before stated. That the assessment was made upon information furnished by both companies—the complainant endorsing upon the blank furnished to it for the return of capital stock, that it had no interest in the capital stock of the lessor company, and that its officers had no knowledge of the amount of such stock, or of the indebtedness of that company; and referred to it for information—and the St. Louis, Alton & Terre Haute Company, in making its own returns, endorsing upon a like blank this:

"N. B. This report refers to the road operated by the St. Louis, Alton & Terre Haute Railroad Company, except the foregoing statement of stock and bonds, *that* having reference to all the road owned by said Company, of which the main line (189 miles) and Alton branch (4 miles) are leased to, and operated by, the Indianapolis & St. Louis R. R. Company, and to which latter Company the taxes thereon should be assessed, as by the terms of said lease said latter Company covenanted to pay all taxes assessed against the St. Louis, Alton & Terre Haute Railroad Company, by reason of its ownership of said property."

By the proceedings of the State Board of Equalization for the year 1873, Exhibit "F," of the bill, at page 151 of the publish-

ed record of the Board, there is found "A tabular statement of the assessment of the Capital Stock of Railroad Companies." And at page 153 of said published record, is the following entry, relating to the Indianapolis & St. Louis Railroad Company:

TABLE "A."—CONTINUED.

NAME OF COMPANY AND COUNTIES.	Length of Main Track in Feet.	Distribution of Capital Stock to Counties.	Total Assessment of Capital Stock.
Indianapolis & St. Louis—see note at bottom of page 155—			
Edgar	[illegible]	$[illegible]	
Coles	[illegible]	[illegible]	
Montgomery	[illegible]	[illegible]	
Shelby	[illegible]	[illegible]	
Christian	[illegible]	[illegible]	
Montgomery	[illegible]	[illegible]	
Macoupin	[illegible]	[illegible]	
Madison	[illegible]	[illegible]	
St. Clair	[illegible]	[illegible]	
	[illegible]		$2,959,181

And at page 155 of said published record is also the following entry, relating to the St. Louis, Alton & Terre Haute Railroad Company:

TABLE "A."—CONTINUED.

NAME OF COMPANY AND COUNTIES.	Length of Main Track in Feet.	Distribution of Capital Stock to Counties.	Total Assessment of Capital Stock.
St. Louis, Alton & Terre Haute			2,959,181
Peoria & Southern Division			1,040,271
St. Clair	[illegible]	$[illegible]	
Randolph	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
	[illegible]	$1,040,271	

* Distributed to counties on the line of the Indianapolis & St. Louis.
† Distributed to counties on the line of the St. Louis, Alton & Terre Haute.

By the Proceedings of the State Board of Equalization for the Year 1874, Exhibit "G" of the Bill, at page 80 of the published Record, there is found—

TABLE "A."

Showing the Assessment made by the State Board of Equalization on the Capital Stock of Railroads.

Accompanying and made part of the Report of the Committee on Assessment of Capital Stock of Corporations.

Name of Company	Capital Stock Paid Up.		Total Indebtedness Except for Current Expenses		Market or Actual Value of Paid Up Capital Stock and Debt as Determined by the State Board.	Capital Stock and Debt as Equalized by the Aggregate Assessment of the State, by Deducting 40 per cent. of Market or Actual Value.	Total Equalized Value of Taxable Property Assessed by State Board, and in Counties.	Assessed and Equalized Value of Capital Stock, being Excess of Equalized Value of Capital Stock and Debt over Equalized Value of Taxable Property.
	Total.	Proportion in Illinois.	Total	Proportion in Illinois.				
Indianapolis & St. Louis, and St. Louis, Alton & Terre Haute	Pro rata. By mileage				$1,407,702	$1,267,932	$1,280,236	$1,125,000
St. Louis, Alton & Terre Haute	$1,268,000	$1,141,851	$2,000,000	$1,800,000	1,224,000	1,101,600	646,761	888,441

Also, by Proceedings of the State Board of Equalization for the Year 1875, Exhibit "H" of the Bill, at page 64 of the published Record, will be found—

TABLE "A."

Showing the Assessment made by the State Board of Equalization on the Capital Stock of Railroads.

Accompanying and made part of the Report of the Committee on Assessment of Capital Stock of Corporations.

Name of Company.	Capital Stock Paid Up.		Total Indebtedness Except for Current Expenses.		Market or Actual Value of Paid Up Capital Stock and Debt as determined by the State Board.	Capital Stock and Debt as Equalized with the Aggregate Assessment of the State, by Deducting 50 per cent. of Market or Actual Value.	Total Equalized Value of Tangible Property assessed by State Board, and in Counties.	Assessed and Equalized Value of Capital Stock, being Excess of Equalized Value of Capital Stock and Debt over Equalized Value of Tangible Property.
	Total.	Proportion in Illinois.	Total.	Proportion in Illinois.				
Indianapolis & St. Louis.					$1,489,792	$744,896	$1,240,180	$1,004,116
St. Louis, Alton & Terre Haute.	$1,000,000	$1,000,000	$1,000,000	$1,000,000	2,000,000	1,000,000	706,632	293,368

It is thus seen that the whole controversy in the case, relates to the taxes imposed upon *Capital Stock*, the taxes upon all other property being returned in separate schedules, and regularly assessed, and long since paid. And the only questions arising, would seem to be, 1st, the legal effect, and proper construction, of the special act of March 10, 1869; and, 2d, the regularity and legality of taxing the appellant upon its stock, or if the matter shall so properly appear, upon a proportion of the stock of the St. Louis, Alton & Terre Haute R. R. Company.

ASSIGNMENT OF ERRORS.

And thereupon, on the case thus stated, the appellant assigns for Error and insists:

1st. That the Circuit Court erred in holding and deciding that its stock was subject to taxation under the laws of Illinois; it being a corporation foreign to that State, and subject to taxation there, only, upon the tangible property it there used, or employed.

2d. The said Court erred in holding and deciding that said special act of the Legislature of Illinois, of March 10, 1869, without any organization effected, or stock subscribed, in that State, constituted the appellant a corporation of that State.

3d. The said Court erred in holding that the Records of Proceedings of the said State Board of Equalization could be so contradicted, changed, or interpreted, as to import an assessment of a part of the capital stock of the St. Louis, Alton & Terre Haute R. R. Company, to be charged against the appellant, by reason of the said contract to pay taxes on that part of the road of said Company, so leased by it.

4th. The said Court erred in holding and deciding that the said Board of Equalization had any jurisdiction, power or authority to assess against the appellant, or distribute to the counties to extend taxes thereon, the whole or any part of the capital stock of the St. Louis, Alton & Terre Haute R. R. Company, either for the reason above stated, or for any other reason whatever.

5th. Said Board of Equalization had no power or authority, as between the appellant and said St. Louis, Alton & Terre Haute R. R. Company, to consider or decide upon the existence of any such contract, or the extent of the obligations it imposed, or its breach if any should be claimed; or, in effect, to render

judgment thereon and award execution therefor. These all being judicial functions, to be exercised only by a competent court, with the proper parties before it.

6th. The said Court erred in holding that the laws of Illinois gave any authority whatever to said Board, to apportion the assessment of the capital stock of the said St. Louis, Alton & Terre Haute R. R. Company, so as to charge the taxes upon a part thereof against the said company, and the residue against the appellant.

7th. The said Board had no data or basis upon which to make any such apportionment: the stock representing all the values belonging to the Corporation, subject to its debts, an apportionment by distances would not correctly divide the stock.

8th. The said Court erred in holding and deciding upon the bill, amended bill, answer and exhibits, upon which only, the the cause was submitted to the Court, against the appellant, and in adjudging and decreeing that the injunction theretofore granted in the cause, should be dissolved, and the bill dismissed at the costs of the appellant: when upon the equities thereon arising, the said injunction should have been made perpetual.

ARGUMENT.

It cannot be necessary to cite authorities in this Court in support of the proposition, that the authority for levying taxes, and the distraint of property to pay them, must be found in the laws of the State, under whose sanction they are imposed, and that the agents upon whom this authority is conferred must, substantially at least, follow it, and comply with the conditions annexed to its exercise, before a tax can be legally levied and enforced. To accomplish this, the law making power must designate the objects of taxation, the agents by whose intervention the law is to be enforced, and the steps necessary to be taken, in order that the tax may be regularly and legally imposed. So much, at least, is due to the inviolability of private property, and to that reasonable measure of security for private interests, which a government of law is supposed to afford.

In the light of these obvious principles, we proceed to the discussion of the questions which the record in this case presents; and we think we shall be able to show clearly, and briefly we hope, that no law of the State of Illinois, has authorized the levy of any tax upon the *capital stock* of the appellant corporation; nor has any authority whatever been given to levy a tax *upon this corporation*, on account of the capital stock of any other company. As this cause originates in Illinois, and concerns taxes upon a railroad corporation, we will say at the outset, that we raise no questions that have yet been passed upon by this Court in any of the cases from that State. We take, as finally established, all that has been so far settled, and we are able to relieve ourselves of much labor, from the fact, that the statutes upon which the case depends, have recently been so critically examined by the Court.

I.

Our first position is, that the appellant is a corporation of the State of Indiana, with a stock subscribed and held under the authority of its laws, and with an organization there, and not elsewhere; and as such corporation, foreign to Illinois, is doing, with the express assent of the State of Illinois, a lawful business in that State.

This is no further controverted in the answer, than by bringing forward the special act of Illinois, already copied, and insisting that this act makes us *also* a corporation in Illinois. If this were true, so long as it stands conceded that our organization is made, and our stock held, under and in accordance with the laws of the foreign State, no right would arise to tax our stock in Illinois. But it is not true; and this act, when properly construed in reference to the objects intended to be attained, and the constitutional powers of the General Assembly of that State, amounts to nothing more than a license to the corporation of a sister State to exert its corporate powers in the State of Illinois, by holding and operating a line of leased railroad there.

The language of the act imports nothing more, and, so long as no corporate organization, or holding of a separate stock in that State was ever made, or contemplated, the *legal effect* of the act is precisely the same, whether it is regarded as a foreign corporation authorized to do business there, or, the foreign corporation, *as such*, is recognized as existing in that State. In either event it is there, as a corporate being simply, *without stock*, and only liable to be taxed upon such tangible property as it possesses or employs in that State.

II.

The proper construction and legal effect of this special Act, are in principle settled by this Court in the case of the *Baltimore & Ohio R. R. Co.* vs. *Harris*, 12 Wal., 65, in considering an Act of Virginia involved in that case. This Act of Virginia, after reciting the Maryland Act, incorporating the Company, with authority to construct a road from Baltimore to the Ohio River, conferred upon the Company substantially the same powers and privileges within the State of Virginia as were conferred upon it in Maryland; and the Court held that no new corporation was created in Virginia, and in the opinion say:

"The permission was broad and comprehensive in its scope; but it was a license, and nothing more. It was given to the Maryland corporation as such, and that body was the same in all its elements and in its identity afterwards as before. In its name, locality, capital stock, the election and power of its officers, in the mode of declaring dividends, and doing all its business, its unity was unchanged; only the sphere of its operations was enlarged."

The Illinois Act must be construed in reference to the constitutional powers of the Legislature that enacted it; and upon the question whether it was intended to create a new corporation, or simply to confirm a lease to the Indiana corporation, and invest it with such powers as were necessary to enable it to enjoy the benefits of the confirmation, the Act should be construed so as to avoid conflict with the Constitution. The Supreme Court of Illinois, in *Porter* vs. *Railroad Co.*, 76 Ill. R., 562, state the principle as it is everywhere established. They say: "The rule of construction by which we must be governed in such cases is, to so construe the statute that the whole shall, if possible, stand. Potter's Dwarris on Stat., 189. And whenever an Act of the Legislature can be so construed and applied as to avoid conflict with the Constitution and give it

the force of law, such construction must be adopted. *Newland vs. March*, 19 Ill., 384."

But if any such construction is placed upon that Act as to make it an attempt to create a new corporation in Illinois, it is, to that extent, flatly repugnant to Sec. 1, Art. X, of the Constitution of 1848, then in force in that State. Rev. Stat. of Ill. of 1874, p. 53. That section provides:

"Corporations, not possessing banking powers or privileges, may be formed under *general laws, but shall not be created by special acts*, except for municipal purposes; and in cases where, *in the judgment of the General Assembly*, the objects of the corporation cannot be attained under general laws." No indication or statement is found in the Act, or elsewhere, showing that the General Assembly were of that opinion, or formed any *judgment* in respect to this enactment.

Its *judgment*, in the very nature of the trust confided to it, can only exist in its recorded proceedings; and we are informed the practice uniformly conformed to the principle, and in all cases where the Legislature undertook to *create* a corporation by a *special law*, they expressed, upon the face of the Act, their inability to accomplish the object by a general law. The absurdity of making such a statement in respect to this Act is apparent when it is remembered that, at the very time, a general law for the creation, organization and regulation of railroad companies was found upon the statute books. Scates, Treat & Blackwell's Compiled Statutes, Vol. II, p. 937.

The averment of the Bill that neither the officers or stockholders of the complainant ever did any act, or took any step to incorporate under this Act, or to create a stock in the State of Illinois, is not denied in the answer; and as it cannot be claimed that the stockholders of the original corporation in Indiana, could be made members of a corporation in Illinois, without their consent, it may be quite immaterial what the character of

the Act was. So long as it remained unexecuted, no corporation would result from its provisions, and the only operative part of it would be, the license of a foreign corporation to operate the leased road in that State.

But as we feel clear in the proposition, that the Act neither did, or was intended to create a corporation, and if it had, would have been unconstitutional and void, we insist that the appellant has always occupied the position of a foreign corporation, doing a business expressly allowed in the State of Illinois. If that is our *status*, the whole case, so far as it involves an attempt to levy a tax upon our stock, is disposed of by a late decision of the Supreme Court of Illinois.

The case of *Western Union Telegraph Co.* vs. *Leib*, 76 Ill. R., 172, originated in an attempt to assess taxes upon the capital stock of that Company, and involved a construction of the very statutory provisions here drawn in question. It appeared that the Telegraph Co. was a foreign corporation, "deriving its existence from the laws of the State of New York, but owning, operating, and controlling, lines of telegraph in this State." The Court say: "After a careful examination of the different sections of the Act bearing upon the question, we are unable to find any provision, which shows that telegraph companies are regarded in anywise differently, for the purpose of taxation, from other corporations." The Court then proceed to a critical examination of the various provisions of the Act, and especially the provision in section 53, requiring "any person, company or corporation, using or operating a telegraph line in this State," to make returns for the purpose of enabling the Board of Equalization to make a valuation of stock and franchise, to be distributed to the counties on the line, as in the case of the valuation of railroad stocks — and arriving at the conclusion, that the only authority to assess taxes upon capital stock is found in the 4th clause of section 3, in these words: "The capital stock

of all companies and associations, *now or hereafter created under the laws of this State, shall be so valued,*" &c., thus state their conclusions: "We are unable to find any authority in the Act, for assessing the capital stock of companies and associations doing business in this State, but incorporated under the laws of another State. The care manifested by the Legislature, whenever any allusion is made to the assessment of capital stock, to limit it to corporations *created by or under the laws of this State*, is so clear and positive, that no doubt can well exist as to the purpose intended." "The assessment upon the capital stock of appellant is not authorized by law, and the collection of the tax levied upon it must be enjoined." And thereupon the decree below was reversed and the cause was remanded, "with direction to that Court to enter a decree perpetually enjoining the collection of *so much of the appellant's taxes as is assessed upon its capital stock.*"

Upon the principle laid down by this Court in *State Railroad Tax Cases*, 92 U. S. R., 617, this decision of the State Court would seem to be decisive, both as to the right and remedy, and requires no further comment from us.

III.

Here the argument might properly close, perhaps, on the merits of the questions presented by our bill and amended bill; but the respondents place themselves upon the ground of denial that the Board of Equalization has made any assessment of complainant's stock, whether regarded as a foreign, or domestic corporation, and insist that they have charged against us the assessment of a part of the stock of the lessor company. It is claimed that the assessment was upon the St. Louis, Alton and Terre Haute Railroad capital stock.

We think an inspection of the recorded acts of the Board of Equalization will show that all the assessments we complain of, were made of the capital stock of the complainant, and we insist that affidavits cannot explain, modify, or change the acts. Might not a judge as reasonably explain by affidavit a judgment rendered in his court, and intended by the record to be made perpetual. These respondents must stand by the acts of the state, as shown by exhibits and not denied in their answer.

It is perfectly settled that parol evidence is not admissable, neither in aid, contradiction, or explanation of the records required to be made in levying the tax. *Lessee of Kellogg* vs. *McLaughlan*, 8 Ohio R. 116. *Lessee of Ward* vs. *Barrows*, 2 Ohio State R., 246. As remarked by Judge Hitchcock in the first of these cases, "it would be a dangerous principle to adopt, that tax titles may be sustained, partly by record and partly by parol proof. If the County Auditor had failed entirely to make the record required, as in the 31st section of the Act, it would hardly be contended, that parol proof of the facts therein required to be recorded, could be admitted. But no reason can be assigned against receiving such evidence, which may not with equal force, be assigned against receiving the evidence now offered."

By the laws of Illinois, every step in the assessment and levy of these taxes is required to be in writing, and made the subject

of public records. If allowed to be varied, or contradicted, by evidence, the greatest confusion and injustice would ensue.

Upon these assessments, as admitted, warrants for the collection of the controverted taxes have been issued against complainant and its property. We need not go behind these acts of the State officers, they entitle us to the injunction.

By these public records, there is nothing to indicate, that the assessment made, was not of the capital stock of the Appellant Co. And after the year 1873, no correction, by note, or otherwise, between that Company and the St. L. A. & T. H. Co. is anywhere found upon the record of the Board of Equalization.

We insist, that the case attempted to be made in the answer, to justify the taxes, levied against the Appellant Co., is wholly inadmissable, and demonstrates more clearly than the bill itself, the complete illegality of those taxes.

1. The answer admits that no valuation of the stock of the Appellant Co. has been made, and whether it is regarded as a foreign or domestic corporation, demonstrates the illegality of the taxes assessed against it.

2. It is demonstrably clear that the Appellant Co., has no interest in the stock of the Alton Co. That stock belongs to that Company, or its stockholders, while everything acquired by the lease to it, is the right to use the tangible property specified in the lease, together with such property as it may have since put upon the line. If, therefore, it is only to be taxed on such property as it owns, uses, or enjoys in the State of Illinois, it is clear that the taxes upon the stock of the Alton Co. must be excluded.

3. No authority whatever is given by the laws of Illinois to the State Board to assess the capital stock of a railroad company, created by the laws of that State, against any other person, or corporation: or to certify to the counties any such assessment, upon which to extend taxes, and issue warrants for the

collection thereof, against any other person, or corporation. On the contrary, the authority given, is expressly confined both by the law and rules adopted by the State Board, for ascertaining the value of the capital stock, to the companies and associations whose stock is thus valued.

4. There is no authority of law whatever, for dividing or apportioning, the assessment of the capital stock of the St. Louis, Alton & Terre Haute Railroad Company, assessing only a part thereof to that Company, and the residue to the Appellant. The 4th subdivision of the 3d section of the Act before cited, requires the Board to determine the fair cash value of the entire capital stock; including the franchise, over and above the assessed value of the tangible property of the Company; and the 110th section (Rev. Stats. Ill., p. 876), requires the *aggregate* amount of capital stock assessed by the Board, to be distributed to the counties.

5. It is not admitted, but positively denied, that we are under any contract obligations to the Alton Company to pay any taxes levied on its stock. We do not enter fully upon the examination of the proposition, for the reason that should have prevented the Board of Equalization from deciding the question between us, viz: that the Alton Company is not a party to these proceedings, and, consequently, has no opportunity to be heard. It is only necessary now to say that our understanding of the covenant in the lease, respecting taxes, binds us only to pay such taxes as are specifically imposed upon the leased property, or personally upon the lessor "by reason of its ownership of said leased road, or any part thereof." In short, that we were to pay taxes upon what was leased to us, and nothing more, whether those taxes were levied upon the property or upon the lessor. And as no stock was included in the property leased, no obligation to pay taxes upon it was created by this covenant.

6. But whether we are right or wrong in this construction, we cannot err in saying, that no power or authority, whatever, has been given to the State Board of Equalization, to hear or determine the questions which must necessarily arise before our liability is established, much less, behind the back of both companies, to proceed to enforce the supposed obligation by authorizing the issue of warrants to seize upon the property of the appellant. While the levying of taxes is conceded to be a legislative power, it will hardly be claimed, that the enforcement of contracts between parties, can be classed in that category. Every step, in such a process, is eminently and exclusively *judicial*, and can only be taken by such a tribunal, when it has the proper parties before it, and a full opportunity to be heard is afforded. The State of Illinois has made no attempt to invest its Board of Equalization with any such authority. The proceedings to assess property and collect taxes in Illinois are statutory, and cannot be used to settle rights of action between private persons, natural or corporate. The property must be assessed to the owners, and the warrants for the collection, issued against the property of such owners. The complainant, before its liability to the St. Louis, Alton & Terre Haute Company, to pay such taxes can be settled, has a right to a day in court, to be heard in defense of such claim, not only as to the construction of the agreement, but, also, as to any matter of defense having arisen subsequently. The St. L., A. & Terre Haute Co. is not a party to this action, and would not be bound by any decision rendered on the merits in the case.

The suggestions made in the answer, that the assessment was made upon information furnished by *both* companies, scarcely merits a moment's attention. The officers of appellant simply stated, that it had no interest in the stock of the other company, and that they had no knowledge of the amount of its

stock or indebtedness; and referred those who were seeking knowledge, upon that subject, to it for information.

It is true the Alton Company, upon one or more occasions, did suggest the levying of a part of its taxes against the appellant; but we do not think that has seriously affected its rights. If it should be held to do so, we think such suggestions would likely, in these times, become very frequent.

R. P. Rannev and
B. W. Hanna,

Solicitors for Appellant.

No. 897.

Supreme Court of the United States.

OCTOBER TERM. A. D. 1877.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY,
Appellant.

vs.

JAMES L. VANCE AND OTHERS, COUNTY COLLECTORS,
Appellees.

BRIEF FOR APPELLEES.

JAMES K. EDSALL,

ATTORNEY GENERAL OF ILLINOIS.

FOR APPELLEES

SPRINGFIELD, ILL.:
D. W. LUSK, STATE PRINTER AND BINDER.
1878.

Supreme Court of the United States.

OCTOBER TERM, A. D 1877.

INDIANAPOLIS AND ST. LOUIS RAILROAD COMPANY,
Appellant,

v.

JAMES L. VANCE, Collector of Edgar county;
WILLIAM B. GALBREATH, Collector of Coles county;
J. H. DUNSCOMB, Collector of Moultrie county;
WILLIAM C. MILLER, Collector of Shelby county;
AMOS A. RHODES, Collector of Christian county;
MARION C. McWILLIAMS, Collector of Montgomery county;
LUCIUS B. CORBIN, Collector of Macoupin county;
HUGH L. BOYLE, Collector of Madison county; and
H. G. WEBER, Collector of St. Clair county,
Appellees.

STATEMENT OF CASE

The bill of complaint filed by the Indianapolis and St. Louis Railroad Company, the appellant, on the 22d of June, 1877, in the Circuit Court of the United States for the Southern District of Illinois, against the appellees, as defendants, shows that it was a corporation organized under the laws of the State of Indiana, with power to build and operate a railroad from Indianapolis "to a point on the line dividing Indiana and Illinois at or near where the St. Louis, Alton and Terre Haute Railroad intersects the same."

Printed Record, p. 2.

The bill also shows that on the 11th day of September, 1867, the Indianapolis and St. Louis Railroad Company, as party of the first part, and the St. Louis, Alton and Terre Haute Railroad Company, as party of the second part, entered into a certain lease or contract, made part of the bill as Exhibit "B," containing among other provisions the following:

"ARTICLE I.

"The said party of the first part shall, will, and may manage, operate and carry on the business of a certain railroad belonging to the party of the second part, and known as the principal or main line of the St. Louis, Alton and Terre Haute Railroad, extending from Terre Haute, in the State of Indiana, to East St. Louis (or Illinoistown), in the State of Illinois, and also a certain branch thereof belonging to the party of the second part, and extending from a point on the said main line to Alton, in the said State of Illinois, for and during the period of ninety-nine years from the first day of June in the present year of our Lord one thousand eight hundred and sixty-seven, upon and subject to the terms and conditions of this indenture, and all and singular the provisions herein contained."

"ARTICLE X.

"The said party of the first part, its successors and assigns, shall and will at all times during the term aforesaid, pay or cause to be paid any and all taxes, assessments and imposts of whatever kind which shall or may at any time during such term be charged, levied, assessed, or imposed upon the said main line of said railroad and the said Alton branch thereof, or upon either or any part of either of the said railroads or their appurtenances, or upon any business or transactions done upon them or either of them, or upon any income arising therefrom, or upon any property whatsoever, the use of which during said term is hereby agreed to be furnished to the party of the first part, or which may be charged against or imposed upon the said party of the second part, its successors or assigns, for or on account of its or their ownership of said railroads, or either or any part of either thereof, or of such property or any part thereof; *Provided, however*, that nothing in this contract contained shall be so construed as to render the party of the first part in any way liable for the tax specifically upon the income of the holders of the bonds or stocks of the party of the second part."

Exhibit "B," pp. 6 and 14.

Other provisions of the lease show that the appellant thereby acquired the right to use and exercise during said term the powers, privileges and franchises granted to the St. Louis, Alton and Terre Haute Railroad Company, under its charter from the State of Illinois, so far as the same relate to said leased line.

Ibid. pp. 7, 9, 10 and 11.

It is also stated in the bill that appellant, in the year 1876, "as required by the laws of the State of Illinois, returned to the Auditor of Public Accounts true and correct schedules of all property it possessed in said State on the first day of May in said year." This schedule is annexed to the bill as exhibit "C," and shows that said company returned its railroad track and the rolling stock used upon its leased line in Illinois, in due form.

Printed Record, pp. 5–7.

The schedule in said returns required to be filled up with figures showing the amount and value of the shares of stock and the indebtedness of the corporation, were left blank, and across the face of said printed sheet in the return for 1876 was written the following in respect to shares of stock:

"The Indianapolis and St. Louis railroad has no capital stock in the State of Illinois."

Ibid. p. 8.

And the following in respect to indebtedness:

"The Indianapolis and St. Louis Railroad Company has no knowledge of the amount of the indebtedness of the St. Louis, Alton and Terre Haute Railroad Company. For information refer to said road."

Ibid. p. 9.

It is averred that under the laws of the State of Illinois, a Board of Equalization convened at the city of Springfield, in said year and assessed against the appellant "as capital stock

for the year 1876, $375,216, as appears by exhibit "D," containing the proceedings of the State Board of Equalization of Illinois for said year.

The bill states "that said assessment of capital stock against it is unjust, illegal and void and without authority of law," and that the amount of said assessment had been certified to the county clerks of said several counties, who had extended taxes thereon, in the aggregate to the amount of $14,373.53, for the year 1876, and placed warrants for the collection of such taxes in the hands of the appellees as collectors of taxes in the several counties mentioned in the above title.

The bill also avers that after the execution of said lease, the General Assembly of Illinois passed an act entitled "An act relating to the Indianapolis and St. Louis Railroad Company, and to authorize extension of said railroad," approved March 10, 1869, by which it was enacted as follows:

"SECTION 1. That the lease of the St. Louis, Alton and Terre Haute Railroad Company, and the property and road thereof, to the Indianapolis and St. Louis Railroad Company, under which the railroad extending from Terre Haute, in the State of Indiana, to East St. Louis, in the State of Illinois, is now operated, be and stand confirmed; that nothing in this act shall be construed to release the said lessor from any debt, cause of action, or contract now existing against them.

"SEC. 2. The said lessees, their associates, successors, and assigns shall be a railroad corporation in this State, under the style of 'The Indianapolis and St. Louis Railroad Company,' and shall possess the same or as large powers as are possessed by said lessor corporation, and such other powers as are usual to railroad corporations. Said Indianapolis and St. Louis Railroad Company may, and are hereby authorized to extend their said line of road from any point on the same between the cities of Pana and Litchfield, on said road, or from either of said points westward to the Mississippi River, opposite Louisana, or any other point below not exceeding fifteen (15) miles, in the State of Missouri, with a branch thereof to the city of Quincy, in the State of Illinois, and the

same to connect with the railroad bridge over said river at said city of Quincy."

Private Laws of 1869, Vol. 2, p. 316.

Printed record, p. 3.

The bill avers that the stockholders in the said company subscribed for no stock under said act.

The court entered a restraining order in accordance with the prayer of the bill.

Printed Record, p. 10.

The Answer of the defendants below, filed July 10, 1877, admitted that the Indianapolis and St. Louis Railroad Company was originally a corporation, organized under the laws of the State of Indiana, but avers that the certain act of the General Assembly of the State of Illinois, entitled "An act relating to the Indianapolis and St. Louis Railroad Company, and to authorize extension of said railroad," approved March 10, 1869, in the bill set forth, was passed by the General Assembly at the request of the Indianapolis and St. Louis Railroad Company, and was accepted and acted upon by that company; and that said company thereby became and has ever since continued to be, in the State of Illinois, a corporation organized under the laws of that State.

The answer admits that appellant leased from the St. Louis, Alton and Terre Haute Railroad Company the line of road in Illinois as alleged in the bill, and that it was the provisions of such lease as contained in exhibit "B," that were so confirmed by said act of March 10, 1869, and admits that the appellant made its return to the Auditor of Public Accounts for the year 1876, as stated in the bill; and after referring to the clause in the lease in reference to the payment by appellants of taxes upon the demised premises, the answer states that—

"Defendants further show to the court that the State Board of Equalization in pursuance of the statute assessed the value of the "capital stock" or property of the various railroad corporations in the State, and that the capital stock of the St. Louis, Alton and Terre Haute Railroad Company, as equalized, over and above the amount of the assessed and equalized value of the tangible property for the year 1876, was $518,764; and that such assessment was according to the statute distributed according to the length of the main track in each county, and that on the portion of the line leased by the Indianapolis and St. Louis Railroad Company the proportionate part of said $518,674 was distributed, to-wit: the sum of $375,326, which was likewise distributed to the counties along said leased line in proportion to the length of the main track in each; and defendants deny such assessment was made upon the capital stock, including the franchise of the Indianapolis and St. Louis Railroad Company, but was only the proper proportion of the assessment of the property of the St. Louis, Alton and Terre Haute Railroad Company, a corporation organized under the laws of the State of Illinois, which had been leased as aforesaid by the Indianapolis and St. Louis Railroad Company, as more fully appears from the printed copy of the proceedings of the Board of Equalization for the State of Illinois for 1876, referred to in the bill as exhibit "D," pages 70 and 72. Defendants further show that said complainants made no return of shares of capital stock or indebtedness to the Auditor, as required by law, but stated as to the indebtedness the following: 'The Indianapolis and St. Louis Railroad Company has no knowledge of the amount of the indebtedness of the St. Louis, Alton and Terre Haute Railroad Company. For information refer to said road.'

"And the St. Louis, Alton and Terre Haute Railroad Company in its sworn return to the Auditor stated that 70-263 of its shares of stock and bonded debt was thus: shares of stock, $1,269,158; debt exclusive of debt for current expenses, $1,863,117, and made the following statement: 'The above statements represent but 70-263 of the capital stock and bonded indebtedness of this company, for the reason that the main line of the company's road, from East St. Louis to Terre Haute, Indiana, 189 miles, and the Alton branch, 4 miles, are leased for 99 years to the Indianapolis and St. Louis Railroad Company, and under the lease, the latter company are to pay, and have assumed the payment of, all taxes assessed or apportioned to the leased portions of the line, leaving but 70 miles to be operated by or taxed to this company. The same divisions as the state board made last year in this apportionment of stock and debts.'"

No replication to the answer was filed.

The decree of the circuit court, entered July 10, 1877, recites as follows:

"By agreement of parties, July 10, 1877, upon this day this cause is submitted to the court for final hearing, upon bill answer and exhibits filed herein, and the court being sufficiently advised in the premises, doth order, adjudge and decree that the restraining order heretofore granted in this case be dissolved, and that the complainants' bill be dismissed, and that the complainant pay the costs of this suit to be taxed; from which decree the said complainant prays an appeal to the Supreme Court of the United States."

The following is quoted from the "Tabular Statement of the assessment upon capital stock of railroad companies," contained in the proceedings of the State Board of Equalization for 1876, made a part of the bill as exhibit "D," to-wit:

Name of Company and Counties	Length of main track in feet	Distribution of capital stock by counties	Total assessment of capital stock
Cincinnati, Lafayette and Chicago Railroad Company			$77,424
Iroquois	167,184	$47,548	
Kankakee	67,344	29,876	
Totals	174,528	$77,424	
Chicago, Milwaukee and St. Paul Railway Company			124,916
Lake	178,832	$68,319	
Cook	100,240	56,597	
Totals	279,072	$124,916	
Illinois and St. Louis Railroad and Coal Company			188,313
St. Clair	77,440	188,313	
Indianapolis and St. Louis Railroad Company, lessee of St. L. A. and T. H. R. R. Co.			375,326
Edgar	1,320 [illegible]	$1,071	
Coles	147,840	37,127	
Moultrie	31,240	8,264	
Shelby	142,560	35,979	
Christian	8,080	2,064	
Montgomery	178,520	49,233	
Macoupin	16,000	11,079	
Madison	160,320	61,405	
St. Clair	1,200	437	
Totals	786,120	$375,326	
*St. Louis, Alton and Terre Haute Railroad Company			143,388
St. Clair	20,070	$1,376	
Randolph	31,075	11,450	
Perry	117,792	4,562	
Totals	168,937	$143,388	

*For remainder of capital stock assessment against this road see amount charged to Indianapolis and St. Louis Railroad Company, as lessee.

Exhibit "D" page 72

The exhibit to the bill containing the proceedings of the State Board of Equalization for 1876, also contains the following:

NUMBER..... NAME OF COMPANY.	CAPITAL STOCK PAID UP.		TOTAL INDEBTEDNESS, EXCEPT FOR CURRENT EXPENSES		Market or actual value of paid up capital stock and debt, as determined by the State Board.	Capital stock & debt as equalized, with the aggregate assessment of the State, by deducting 70 per cent. of market or actual value.	Total equalized value of taxable property assessed by State Board and in counties	Assessed & equalized value of capital stock being excess of equalized value of capital stock & debt over equal'd value of taxable property.
	Total.	Proportion in Illinois.	Total.	Proportion in Illinois				
37 Indianapolis and St. Louis As lessee St. L. A. and T. H. R. R. Co					$3,007,221	$1,503,612	$1,128,286	$375,326
53 St. Louis, Alton and Terre Haute	1,768,000	1,511,881	7,000,000	6,075,000	1,162,274	581,137	437,749	143,388

For remainder of Capital Stock Assessment against this road, see amount charged to Indianapolis and St. Louis Railroad Co. as lessee.

Exhibit "D," page 70.

BRIEF FOR APPELLEES.

I.

THE BILL SHOWTS NO EQUIY UPON ITS FACE.

The case sought to be made by the bill is that appellant was a foreign corporation, and not subject to taxation upon its own capital stock under the revenue law of Illinois, as construed in

Western Union Telegraph Co. v. Lieb, 76 Ill., 172.

The exhibit filed with the bill as a part thereof, shows that the tax in question was assessed upon the capital stock of the St Louis, Alton and Terre Haute Railroad Company, a corporation organized under the laws of Illinois, and that it was the duty of the appellant to pay the tax as lessee of the line of road in Illinois, built by the Illinois corporation.

II.

THE AVERMENTS IN THE ANSWER ARE ADMITTED UPON THE RECORD.

It is a general rule in equity practice that when a cause is heard upon bill and answer, the answer is taken as "true in all points" whether responsive to the bill or not.

2 Dan., Ch. Plead. and Prac. (4 ed.) 982.

Childs v. Horr, 1 Clarke (Iowa), 432.

Warren v. Twilley, 10 Md., 39.

Perkins v. Nicholls, 11 Allen, 542.

Brinkerhoff v. Brown, 7 John, Ch. 217-223.

Dale v. McEvers, 2 Cowen, 118.

De Wolf v. Long, 2 Gilm., 679.

Leeds v. Marine Ins. Co., 2 Wheat., 380.

III.

THE ANSWER DISCLOSES A COMPLETE DEFENSE.

Whatever may be held as to the vague and equivocal averments in the bill, the exhibit filed therewith, as well as the answer clearly show that the taxes in question were not assessed upon the capital stock of the Indianapolis and St. Louis Railroad Company, but upon that of the St. Louis, Alton and Terre Haute, and charged against appellant by virtue of its position as lessee, and covenant to pay such taxes.

The right of the State of Illinois, under its present revenue law, to tax corporations organized under its laws, upon their capital stock, is fully established.

Porter v. R., R. I. & St. L. R. R. Co., 76 Ill., 561.

Republic Life Ins. Co. v. Pollak, 75 Ill., 292.

State Railroad Tax Cases, 2 Otto, 575.

Ottawa Glass Co. v. McCulch, 81 Ill., 556.

The tax upon the capital stock of a corporation, in the sense those terms are used in the Illinois revenue law, is a tax upon its property.

Porter v. R., R. I. & St. L. R. R. Co., 76 Ill., 563-572.

IV.

A TENANT IN POSSESSION IS LEGALLY CHARGEABLE WITH THE PAYMENT OF TAXES UPON THE DEMISED PROPERTY.

So far as the public is concerned, it is a general principle that the tenant is bound to pay all taxes imposed on the premises, and irrespective of a covenant to pay, the State may enforce payment against the tenant.

Taylor's Landlord and Tenant, (5 ed.) § 395, p. 293.

Blackwood v. Van Vleit, 30 Mich., 118.

Hughes v. Young, 5 Gill and John, 367.

And for stronger reasons this right exists where the tenant has covenanted to pay the taxes.

New York v. Cashman, 10 John., 96.

If, as between landlord and tenant, the latter is not bound to pay the taxes, he may pay the same nevertheless, and deduct the amount from the rent, or maintain a suit therefor against the landlord.

Taylor's Landlord and Tenant, § 395, p. 293.

The statutes of Illinois contemplate that the party in possession or "operating" a railroad shall be chargeable with the taxes thereon.

Rev. Stat. of 1874, pp. 865-867, §§ 40, 48.

Kennedy v. St. L., V. and T. H. R. R. Co., 62 Ill., 395.

V.

HE WHO SEEKS EQUITY MUST DO EQUITY.

It was upon the express condition that appellant would pay the taxes in question, that the Legislature of Illinois, by the Act of March 10, 1869, confirmed the lease and authorized appellant to exercise the franchises and operate the road in Illinois leased from the St. Louis, Alton and Terre Haute Railroad Company.

Without the consent of the State, express or implied, the appellant, as a foreign corporation, could not lawfully operate the leased line in Illinois, and the State had the right to require payment of taxes on the leased property as the condition upon which such consent was granted.

Ducat v. Chicago, 10 Wall., 410.

Paul v. Virginia, 8 Wall., 168.

Bank of Augusta v. Earl, 13 Peters, 519.